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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**  
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11 TOLAVIUS TIMMONS,  
12 Plaintiff(s),

13 v.

14 LT. ZOLMAN, et al.,  
15 Defendant(s).

Case No.: 2:17-cv-00360-MMD-NJK

**ORDER**

[Docket No. 26]

16 Pending before the Court is Defendants' motion to strike the third amended complaint.  
17 Docket No. 26; *see also* Docket No. 17 (third amended complaint). To date, no response to the  
18 motion to strike has been filed.

19 Plaintiff filed the third amended complaint without leave of court and without Defendants'  
20 consent. Indeed, leave to amend was expressly denied in the order screening the second amended  
21 complaint. Docket No. 14 at 1 ("To ensure this case proceeds, the Court declines to give further  
22 leave to amend claims that do not state a claim at this time"). As such, filing that amended pleading  
23 was improper. *See* Fed. R. Civ. P. 15(a)(2). "When an amended pleading cannot be made as of  
24 right and is filed without leave of court or consent of the opposing party, it is without legal effect."  
25 *Gengler v. U.S. ex rel. Dept. of Defense and Navy*, 463 F. Supp. 2d 1085, 1093 (E.D. Cal. 2006).  
26 A rogue amended pleading is properly stricken from the docket. *See, e.g., Hardin v. Wal-Mart*  
27 *Stores, Inc.*, 813 F. Supp. 2d 1167, 1181 (E.D. Cal. 2011); *Westmoreland v. Lake's Crossing Ctr.*,  
28 2017 WL 6614100, at \*1 n.1 (D. Nev. Dec. 27, 2017) (Du, J.).

1 Accordingly, the motion to strike is **GRANTED** and the Clerk's Office is **INSTRUCTED**  
2 to strike the third amended complaint (Docket No. 17) from the docket.<sup>1</sup> The second amended  
3 complaint is the operative complaint.

4 IT IS SO ORDERED.

5 Dated: August 16, 2019

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Nancy J. Koppe  
United States Magistrate Judge

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27 <sup>1</sup> Because nothing herein prevents Plaintiff from properly seeking leave to amend should  
28 appropriate grounds exist for doing so, this ruling is nondispositive and is fashioned as an order.  
*See, e.g., Slocum v. Fowler*, 2018 WL 4468998, at \*4 (D. Nev. Sept. 18, 2018) (Hoffman, J.); *Allen*  
*v. Clark Cty. Detention Ctr.*, 2011 WL 2014780, at \*1 (D. Nev. May 23, 2011) (Foley, J.).